



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Date: February 26, 2008

Number: 200821037

Release Date: 5/23/2008

UIL Nos.: 501.03-30

501.36-00

501.36-01

512.00-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear :

This is our final determination that you do not qualify for exemption from Federal Income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Since you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

Letter 4038 (CG) (11-2005)  
Catalog Number 476325

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Robert S. Choi  
Director, Exempt Organizations  
Rulings & Agreements

Enclosure  
Notice 437  
Redacted Proposed Adverse Determination Letter  
Redacted Final Adverse Determination Letter

Letter 4038 (CG) (11-2005)  
Catalog Number 476328



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Date: January 8, 2008

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

A = Board Member  
M = Applicant Corporation  
N = State  
O = Date  
P = Corporation  
Q = Corporation

UIL Nos.: 501.03-30  
501.36-00  
501.36-01  
512.00-00

Dear :

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

Facts:

M was incorporated in the State of N on O. M's activities were previously conducted by P, a for-profit travel and tour operator. M acquired P's performance event segment to enhance and enrich student music education and group and individual musical assessment and development. Further, M acquired P's performance event segment because it was believed to be educational in nature and non-profitable. By creating M, P felt that they would be encouraging increased student and school participation in musical events. P felt that their former performance event segment was only a by-product or necessary evil to provide the destination event for participating students and schools. Currently, only one of the board members of P also serves as a board member of M.

M and its predecessor, P, will maintain a working relationship by referring students, schools and other organizations to each other for their respective services. M's web site refers potential customers to P for assistance with transportation, lodging, meals or other attractions. The site

includes P's phone number and web site and states that P's staff can assist in every aspect of planning and implementing the perfect group travel experience. M refers to P as their preferred travel partner.

M contracts with P for the following services:

All customer communication

- Establish exact performance needs
- Manage extensive changes throughout the year
- Manage account balance
- Provide support during actual event implementation

All vendor communication

- Manage performance venues
- Manage event contract labor staff
- Communicate detailed customer needs

Employee Management

- Benefits
- Add, delete, or make changes to staff

Provide office needs

- Extensive computer and communication network
- Access to operational and sales database
- Upgrades to database
- Provide vehicles and transportation needs for office staff and contract laborers
- Develop marketing materials and apparel
- Investigate and implement new products and services
- Provide support for annual leadership workshop details
- Provide extensive support for transition of Showcase product without losing momentum
- Develop and send emails, letters, and surveys to potential customer base for additional perceived needs and how we can provide assistance

M will reimburse P on a monthly basis for the reasonable expenses P has incurred in the provision of these services. M will reimburse P for all such expenses to the extent that P can show that the expenses are reasonable and represent costs not to exceed fair market value of the services rendered. All money paid by M to P will be for the reimbursement of actual expenses incurred by P to provide services to M.

M will lease space from Q, a company owned wholly or in part by A. M has submitted a certified appraisal documenting that M is paying no more than fair market value to lease this facility.

M's purpose statement indicates that their purpose is to actively support music education with the production of performance and music program development across the United States. Events can include music festivals, invitational concerts and workshops, prepared recording competitions, honor concerts, all star touring ensembles and other events identified by active teachers as a viable endeavor. Event participants will include band, choir and orchestra ensembles and individuals from all age groups. Events will be produced with a focus on the highest level of quality and the most affordable prices possible. Events and product offerings will be developed by committees comprised of active educators, requests from civic and development leaders in communities from abroad, events recommended by other not-for-profit music education organizations, and events licensed from existing companies in the music industry. M's events will provide an educational value to participants, operate within a self-supporting budget, and approve their ability to attract the appropriate number of participants to ensure their success. Events will be marketed through one of the following channels:

- Direct to music programs
- To preferred providers and sponsors
- To all tour and travel operators working with music groups

M will maintain and continually strive to improve a dynamic vision that serves band, choir, and orchestra students across the United States.

- To develop and provide educational performance opportunities for music students of all ability levels
- To recognize and celebrate the musical achievement of groups and individuals
- To impact an increasing number of students by continuously expanding our performance venues, locations and events
- To design and implement staff training programs to ensure every participant has a positive and memorable performance experience
- To rely upon a knowledgeable and diverse Board of Trustees, numerous Advisory Boards, and participant observation in an effort to continually improve and adapt to the ever changing needs of music education

M will coordinate, develop, and provide events that individual band, choir, and orchestra directors could not achieve alone. By continually improving existing events and researching new ideas, M will become the voice of music educators and their program needs for performance.

M plans to further support music education by making grants to educational institutions for scholarship funding.

M's Articles of Incorporation state that M is organized for charitable, religious, scientific, literary or educational purposes within the meaning of 501(c)(3).

M's Bylaws provide for a nine member board elected by a majority of the Board of Trustees. Currently, of the nine board members, only board member A serves on the board of both M and P.

M's actual income for the year 2006 was \$ from their cost of goods sold and \$ from interest income. M's budgets reflect revenues from the following sources:

Income Category	2007	2008	2009
Donations	\$	\$	\$
Corporate Sponsorships	\$	\$	\$
Advertising	\$	\$	\$
Interest	\$	\$	\$
Cost of Goods Sold	\$	\$	\$
Total Income:	\$	\$	\$

M's actual expenses for 2006 consist of the following:

Expense	Amount
Bank Fee	\$
Employee Benefits	\$
Employee Incentive	\$
Insurance	\$
Interest	\$
Office Supply	\$
Payroll	\$
Postage and Shipping	\$
Retirement	\$

Net Income (loss) (\$ )

M's projected expenses for 2007, 2008, and 2009 are broken down as follows:

Expense Category	2007	2008	2009
Bank Fee	\$	\$	\$
Board of Trustees	\$	\$	\$
Committees	\$	\$	\$
Communications	\$	\$	\$
Company Fuel	\$	\$	\$
Credit Card Fee	\$	\$	\$
Dues, Fees, Subscript.	\$	\$	\$
Educational Material	\$	\$	\$
Employee benefits	\$	\$	\$
Employee Incentive	\$	\$	\$
Insurance	\$	\$	\$
Interest Expense	\$	\$	\$
Job Vacancy Ad.	\$	\$	\$
Marketing and Prom.	\$	\$	\$
Office Supply	\$	\$	\$
Payroll	\$	\$	\$

Postage and Shipping	\$		\$	\$
Professional Fees	\$		\$	\$
Rent	\$		\$	\$
Repair and Maint.	\$		\$	\$
Retirement	\$		\$	\$
Sales Visit	\$		\$	\$
Site Visit	\$		\$	\$
Training or Workshop	\$		\$	\$
Utility	\$		\$	\$
<hr/>				
Net Income or (Loss)	(\$	)	\$	\$

**LAW:**

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable and educational purposes.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the Regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earning inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(1)(i) of the Regulations provides that an organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes:

- (a) Religious,
- (b) Charitable,
- (c) Scientific,
- (d) Testing for public safety,
- (e) Literary,
- (f) Educational, or
- (g) Prevention of cruelty to children or animals.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides that an organization is not



organized or operated for exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled directly or indirectly, by such private interests.

Section 1.501(c)(3)-(1)(e) of the Regulations provides that an organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in section 513.

Section 513 of the Code provides that the term "unrelated trade or business" means any trade or business the conduct of which is not substantially related to the exercise or performance by an organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501, except that such term does not include any trade or business --

- a) In which substantially all the work in carrying on such trade or business is performed for the organization without compensation, or
- b) Which is carried on, in the case of an organization described in section 501(c)(3) primarily for the convenience of its members, students, patients, officers, or employees, or
- c) Which is the selling of merchandise, substantially all of which has been received by the organization as gifts or contributions.

Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), held that the presence of a single nonexempt purpose, if substantial in nature, will preclude tax exemption under section 501(c)(3) of the Code.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court held that the organization did not qualify for tax exemption under section 501(c)(3) of the Code. In this case, the B.S.W. Group, Inc. was formed for the purpose of providing consulting services primarily in the area of health, housing, vocational skills and cooperative management. The consulting clients were tax-exempt organizations. Consulting services were provided at or close to cost, however, fees were sufficiently high to enable B.S.W. to retain at least a "nominal" administrative fee. The Internal Revenue Service denied exemption to the organization under section 501(c)(3) because the organization did not meet the operational test of section 1.501(c)(3)-1(c) of the Regulations, since it was primarily engaged in an activity which is characteristic of a trade or business. The Court agreed with the Service's adverse ruling, noting that B.S.W.'s activity constitutes the conduct of a consulting business of the sort which is ordinarily carried on by commercial ventures organized for profit.

In International Postgraduate Medical Foundation v. Commissioner, TCM 1989-36 (1989), the Tax Court considered the qualification for exemption under section 501(c)(3) of the Code of a



nonprofit corporation that conducted continuing medical education tours. The petitioner had three trustees. Mr. Helin, who was a shareholder and the president of H & C Tours, a for profit travel agency. Mr. Regan, an attorney, and a third director who was ill and did not participate. Mr. Helin served as executive director. The petitioner used H & C Tours exclusively for all travel arrangements. There is no evidence that the petitioner ever sought a competitive bid. The Court found that a substantial purpose of the petitioner was benefiting the for-profit travel agency. It concluded that:

When a for-profit organization benefits substantially from the manner in which the activities of a related organization are carried on, the latter organization is not operated exclusively for exempt purposes within the meaning of section 501(c)(3) even if it furthers other exempt purposes.

We find that a substantial purpose of petitioner's operations was to increase the income of H & C Tours. H & C Tours benefits from the distribution and production of brochures which solicit customers for tours arranged by H & C Tours. Approximately 90 percent of petitioner's total revenue for 1977 was expended on production and distribution of brochures. The terms of the Travel Service and Administrative Support Agreement further insured that H & C Tours would substantially benefit from petitioner's operations. Petitioner did not solicit competitive bids from any travel agency other than H & C Tours.

In est of Hawaii v. Commissioner, 71 T.C. 1067 (1979), several for-profit est organizations exerted significant indirect control over est of Hawaii, a nonprofit entity, through contractual arrangements. The Tax Court concluded that the for-profits were able to use the nonprofit as an "instrument" to further their for-profit purposes. Neither the fact that the for-profits lacked structural control over the organization nor the fact that amounts paid to the for-profit organizations under the contracts were reasonable affected the court's conclusion that est of Hawaii did not qualify as an organization described in section 501(c)(3) of the Code.

In Church by Mail, Inc. v. Commissioner (1985), the Court affirmed a Tax Court decision (T.C. 1984-349). Church by Mail sent out sermons in numerous mailings. This required a great deal of printing services. Twentieth Century Advertising Agency provided the printing and mailing. Twentieth Century was controlled by the same ministers. It also employed family members. The services were provided under two contracts. The contracts were signed by the two ministers for both Church by Mail and Twentieth Century. Church by Mail business comprised two-thirds of the business of Twentieth Century. In deciding for the government, the Court made the following statement:

There is ample evidence in the record to support the Tax Court's finding that the Church was operated for the substantial non-exempt purpose of providing a market for Twentieth's services. The employees of Twentieth spend two-thirds of their time working on the services provided to the Church. The majority of the Church's income is paid to Twentieth to cover repayments on loan principal, interest, and commissions. Finally, the potential for abuse created by the ministers' control of the Church requires open and candid disclosure of facts bearing upon the exemption application. Moreover, the ministers' dual control of both the Church and Twentieth enables them to profit from the affiliation of the two entities through

increased compensation.

Rev. Rul. 67-392, 1967-2 CB 191 held that a nonprofit organization which encouraged and promoted the advancement of young musical artists by conducting weekly workshops, sponsoring public concerts by the artists, and securing paid engagements for the artists to improve their professional standing may be exempt from Federal income tax under section 501(c)(3) of the Code.

Rev. Rul. 72-369, 1972-2 CB 245 held that an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations did not qualify for exemption under section 501(c)(3) of the Code.

Rev. Rul. 76-206, 1976-1 CB 154 held that a nonprofit organization formed to generate community interest in the retention of classical music programs by a local for-profit radio station by seeking program sponsors, encouraging continuation of contracts by existing sponsors, urging the public to patronize the sponsors, soliciting subscriptions to the station's program guide, and distributing materials promoting the classical music programs, all of which activities tended to increase the station's revenues, did not qualify for tax exemption under section 501(c)(3).

#### Application of Law:

Section 501(c)(3) of the Code sets forth two main tests for qualification for tax exempt status. An organization must be both organized and operated exclusively for purposes described in section 501(c)(3). M has satisfied the organizational test.

To satisfy the operational test, M must be operated exclusively for one or more exempt purposes. M will not be "operated exclusively for one or more exempt purposes" unless the following conditions are met. First, as set forth in sections 1.501(c)(3)-1(c) and 1.501(c)(3)-1(d)(1)(ii) of the Regulations, M's net earnings must not inure in whole or in part to the benefit of any private shareholders or individuals and M must serve public rather than private interests. Second, as set forth in section 1.501(c)(3)-1(e)(1), M's musical event services must be operated in furtherance of exempt purposes and not carrying on an unrelated trade or business.

It is our understanding that M's primary activity is to organize venues and make arrangements for musical performances throughout the world on a fee basis. Revenues from fees for services are projected to represent 85% to 90% of M's total revenues each year. Prior to M's incorporation, P, a related for-profit entity, was conducting the activities that M now conducts. M's web site refers individuals to P for assistance in travel-related services. The web site contains personal accolades from M's past participants who praise P for its travel services. One of P's partners serves as president and paid staff member of M. In addition, P's attorney serves as an officer of M. M is contracting with P for services as well as the use of their facility. P is providing extensive services to M, including all customer and vendor communications, employee management, office needs, marketing, transportation, product development, advertising, etc... M pays P a reasonable reimbursement of P's actual expenses in return for these services. The contract stipulates that M will not pay in excess of fair market value for services provided.

Based on the information submitted, we hold that M does not meet the requirements outlined in

sections 1.501(c)(3)-1(c), 1.501(c)(3)-1(d)(1)(ii), and 1.501(c)(3)-1(e)(1) of the Regulations. M's contract with P serves private rather than public purposes, M's earnings inure to P and ultimately P's partners, and finally, M's primary activity, the organization of musical events throughout the world on a fee basis, constitutes an unrelated trade or business regularly carried on.

The presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes. Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945). Like the Better Business Bureau of Washington D.C., Inc., M is furthering a substantial non-exempt purpose by setting up global musical performances for a fee. M is funded almost entirely through fees for services and thus lacks the donative element necessary to characterize their activities as charitable. Further, M's activities ultimately serve the private interests of P to a substantial degree.

M is similar to B.S.W. Group, Inc. because M's activities constitute the conduct of a commercial business of the sort which is ordinarily carried on by commercial venues organized for profit. Like B. S. W. Group, Inc., the fact that M's fees are set at or close to cost is not enough to characterize their activities as charitable.

M is similar to the organization described in International Postgraduate Medical Foundation v. Commissioner, supra, because P and by extension P's partners benefit substantially from the manner in which M's activities are conducted.

In order for private benefit to be present it is not required that payments for goods or services to P be unreasonable or exceed fair market value. In est of Hawaii, the Tax Court stated:

***"Nor can we agree with petitioner that the critical inquiry is whether the payments made to International were reasonable or excessive. Regardless of whether the payments made by petitioner to International were excessive, International and EST, Inc., benefited substantially from the operation of petitioner."***

Like Est of Hawaii, P is benefiting to a substantial degree from the operations of M. The fact that M is reimbursing P at rates which are not unreasonable or excessive does not take away the fact that M is serving the private interests of P rather than the interests of the general public. As a result, tax exemption under section 501(c)(3) is precluded.

Also, in Church by Mail, supra, the Church argued that the compensation to the for-profit was reasonable. The Court's statement on the subject is very significant. The Church exaggerates the importance of the contracts. The critical inquiry is not whether particular contractual payments to a related for-profit organization are reasonable or excessive, but instead whether the entire enterprise is carried on in such a manner that the for-profit benefits substantially from the operation. Like Church by Mail, M's entire enterprise is carried on in such a manner that the for-profit, P, benefits substantially from M's operation. The requirements for tax exemption under section 501(c)(3) are not met because M is serving private rather than public purposes.

M is dissimilar to the organization described in Rev. Rul. 67-392. Unlike the organization described in the ruling, M is operating an unrelated trade or business that is funded almost entirely through fees. M lacks the donative element necessary to characterize their activities as charitable.

M is similar to the organization described in Rev. Rul. 72-369 because M is also providing commercial services on a cost basis. In this case, M's commercial services consist of setting up and arranging for musical performance events worldwide. As noted in this ruling, providing commercial services on a cost basis lacks the donative element necessary to characterize M's activities as charitable.

M is similar to the organization described in Rev. Rul. 76-206, 1976-1 CB 154 because their primary purpose of enriching the musical arts through the organization of musical events ultimately lead to an increase in revenues to M's related for-profit P. As a result, M does not qualify for tax exemption under section 501(c)(3).

#### Taxpayer's Position:

M argues that they are organized and operated exclusively for the exempt purpose of education, specifically the arts education of music. M states that they serve exclusively public interests by conducting music festivals, contests, workshops, performances and educational opportunities for students. M states that they do not serve private interests. Schools and musical groups choose to participate in M's events directly or through tour and travel service companies. Participating organizations are not required to use the services of M's related travel company, P. Advertised fees are charged for events and these fees do not include travel-related fees. M's mission is to provide students with opportunities in music at the lowest possible cost. They state that one of the reasons they are applying for tax exemption is to obtain the benefit of contracting with performance venues, judges etc... on a much lower fee schedule, which will result in lower fees charged to schools and other music groups for performance participation.

Finally, M argues that they have an independent board made up of nine individuals who are music educators from various disciplines throughout the United States. They assert that M's board is not controlled by P and that the activities of M do not further the private interests of P.

#### IRS Position:

We assert that M is not organized for the exclusive charitable purpose of arts education. M's sole activity is to arrange musical performance events for schools and other musical groups on a fee basis. Fees represent % to % of M's projected revenues. Arranging for musical events on a fee basis constitutes a commercial service. Such activities do not meet the definition of charitable as outlined in section 1.501(c)(3)-1(d)(1)(i) of the Regulations. Even though these services are provided on a cost or break-even basis for various nonprofit organizations, they still lack the donative element necessary to characterize them as charitable within the meaning of section 501(c)(3). Such activities would be more accurately described in Section 513 of the Code as unrelated trade or business activities.

Further, M is conducting activities which were previously conducted by a related for-profit, P. P's partner, A, and P's attorney, serve as board members of M. M leases space from Q, a



company owned wholly or in part by A at below fair market value. M contracts with P for the following services: customer communication, vendor communication, employee management, and office services. M reimburses P on a monthly basis for the costs incurred by P to provide these services. There is no indication that M solicited competitive bids to determine which organization they would contract with to provide these services. Ultimately, P benefits substantially from the operation of M and this substantial benefit is not incidental to M's overall charitable purpose. The requirements outlined in sections 1.501(c)(3)-1(c) and 1.501(c)(3)-1(d)(1)(ii) of the Regulations are not met because M's contract with P serves private rather than public purposes and M's earnings inure to P and ultimately P's partners.

#### Conclusion:

Based on the facts presented in your application, we conclude that you are not tax exempt under section 501(c)(3) of the Code because you do not meet the operational test outlined in section 1.501(c)(3)-1(c) of the Regulations. Rather, we hold that you are best described as an unrelated trade or business described in section 513 of the Code.

Section 1.501(c)(3)-1(c) of the Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Based on the Information provided, it is clear that M's earnings inure to P through M's contract for services with P. M was created by P to take over activities that were previously carried on by P. M contracts with P for services on a cost basis. There is not indication in the file that M solicited a competitive bid for such services. Rather, it appears that M exists to provide substantial benefits to P which are not incidental to M's overall charitable purposes. As a result, we are not able to conclude that M is operated exclusively for public rather than private purposes. Despite any educational purposes M's activities may achieve, M cannot qualify for tax exemption because more than an insubstantial part of M's activities is not in furtherance of exempt purposes.

Further, M's sole activity to arrange for musical performance events for a fee. Such activities do not meet the definition of charitable as outlined in section 1.501(c)(3)-1(d)(1)(i) of the Regulations. Rather, M's activities constitute a commercial activity as defined in section 513 of the Code. Providing commercial services for a fee, regardless of the fact that fees are based on cost, and that educational purposes are being achieved incidentally, does not change the nonexempt character of M's activities. Since these commercial services are M's sole activity and they represent % or more of M's total revenue, tax exemption under section 501(c)(3) is precluded.

Accordingly, M does not qualify for exemption under section 501(c)(3) of the Code because M does not meet the proscriptions outlined in sections 1.501(c)(3)-1(c), 1.501(c)(3)-1(d)(1)(ii) and 1.501(c)(3)-1(e)(1), of the Regulations.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at [www.irs.gov](http://www.irs.gov), Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:  
Internal Revenue Service  
EO Determinations Quality Assurance  
Room 7-008  
P.O. Box 2508  
Cincinnati, OH 45201

Deliver to:  
Internal Revenue Service  
EO Determinations Quality Assurance  
550 Main Street, Room 7-008  
Cincinnati, OH 45202

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.



If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Robert Choi  
Director, Exempt Organizations  
Rulings & Agreements